

**IN THE SUPREME COURT OF MISSOURI**

STATE OF MISSOURI ex rel.	)	
ST. LOUIS POST-DISPATCH, LLC	)	
	)	
Relator,	)	
	)	
v.	)	No. SC86952
	)	
THE HONORABLE JOHN F. GARVEY	)	
	)	
Respondent.	)	

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Writ of Prohibition from the  
Circuit Court of St. Louis City

The Honorable John F. Garvey

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Substitute Brief of Appellant/Relator/Intervenor Multimedia KSDK, Inc.  
NewsChannel 5

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### **Jurisdictional Statement**

Multimedia KSDK, Inc. NewsChannel 5 ("KSDK"), applied for transfer of this prohibition proceeding to the Supreme Court of Missouri because the Missouri Court of Appeals overlooked and misinterpreted material matters of law in its May 3, 2005 opinion ("Final Opinion").

The Post-Dispatch brought this prohibition action to challenge an order by Respondent, Honorable Jack Garvey, closing criminal juvenile proceedings in a case pending in the Circuit Court of the City of St. Louis in the Juvenile Division, styled In the Interest of L.K., Cause No. 0522-JU00198. KSDK sought and was granted leave to intervene in this prohibition action. On March 29, 2005, after granting a preliminary writ, the Appellate Court granted Relator's request for a permanent writ of prohibition as it relates to "the adjudicatory hearing," but quashed the preliminary writ as it relates to other proceedings in the matter—including the certification and dispositional phases. The Final Opinion (issued on May 3, 2005) is substantively identical to the March 29, 2005 Opinion—absent a footnote that was not necessary to the disposition of this case. Subsequently, the Appellate Court denied Relators' Motions for Rehearing and Applications for Transfer.

This Court granted KSDK's Application for Transfer pursuant to Mo. R. Civ. P. 83.04 and now reviews the case as though on original appeal. Buchwesier v. Estate of Laberer, 695 S.W.2d 125, 127 (Mo. banc 1985).

### **Statement of Facts**

Upon information and belief, earlier this year, a twelve year old juvenile fatally strangled a nine year old sibling. That twelve year old juvenile was charged with first degree murder as a result of the death. See Appendix, A-1. Upon information and belief, the Circuit Court in Division 6 of the Circuit Court for the City of St. Louis assigned the proceedings case number 0522-JU00198. See Id.

The Juvenile Court requested media organizations file legal briefs relating to the Defendant's Motion to Close the Juvenile Proceedings. Those briefs were due on March 2, 2005. KSDK and the Post-Dispatch filed briefs stating their respective positions that the Juvenile Proceedings should be open. On March 3, 2005, the Circuit Court issued an order granting Defendant's Motion to Close the Juvenile Proceedings ("Order").

On that same day, the Post-Dispatch filed a Writ of Prohibition/Mandamus. KSDK sought, and was granted leave, to intervene in the Prohibition action shortly thereafter. On March 29, 2005, Writ Division III of the Missouri Court of Appeals, Eastern District granted in part, and quashed in part, a preliminary order in prohibition that had been entered by the Court on March 4, 2005 ("Opinion").<sup>1</sup> On April 7, 2005, Relator St. Louis Post-Dispatch, LLC ("Post-Dispatch"), filed a Motion for Rehearing

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<sup>1</sup> The preliminary order stayed the Juvenile Proceedings and, more generally, prohibited Respondent from closing any proceedings in the juvenile matter.

and Suggestions in Support of that Motion. KSDK also filed Suggestions in Support of the Post-Dispatch's Motion for Rehearing on that date. On April 13, 2005, both the Post-Dispatch and KSDK filed Applications for Transfer to the Missouri Supreme Court.

On May 3, 2005, Writ Division III of the Missouri Court of Appeals withdrew the March 29, 2005 Opinion and substituted a new Opinion ("Final Opinion"). The Final Opinion is substantively identical to the March 29, 2005 Opinion—absent a footnote that was not necessary to the disposition of this case. Also on May 3, 2005, the Court denied Relators' Motions for Rehearing and Applications for Transfer as moot. The Court of Appeals denied KSDK's most recent motion for rehearing and application for transfer on June 30, 2005. KSDK then timely applied for transfer to this Court and that transfer was accepted.

In its Final Opinion, the Missouri Court of Appeals stated that the "preliminary order in prohibition is made absolute in part as to the adjudicatory hearing." (Opinion, p. 6). The Court ordered Respondent to open the adjudicatory hearing to the general public, including Relators. The Court reasoned that Mo. Rev. Stat. §211.171.6 does not provide the general public with the right to attend "all proceedings" in a juvenile court, even when the juvenile is charged with conduct constituting a class A or B felony if committed by an adult, but instead only mandates public access to "the hearing." According to the Court, "pursuant to the language of section 211.171, the public cannot be excluded from the adjudicatory hearing where a

child is accused of conduct which, if committed by an adult, would be considered to be a class A or B felony.” (Opinion, p. 3).

KSDK respectfully requests that this Court reverse the Missouri Court of Appeals’ decision restricting public access to the underlying juvenile proceedings to only the “adjudicatory hearing,” and order that all proceedings in the underlying juvenile proceedings be open to the public pursuant to Mo. Rev. Stat. §211.171.6.

**Points Relied On**

**The Missouri Court of Appeals Eastern Division Erred Because As A Matter of Basic Statutory Interpretation, Access To The Underlying Juvenile Proceeding Cannot Be Limited to the "Adjudicatory" Hearing Under Mo. Rev. Stat. §211.171.6 In Cases Where A Juvenile Has Been Charged With Acts That Would Be A Class A Or B Felony If Committed By An Adult.**

Robinson v. Health Midwest Dev. Group, 58 S.W.3d 519, 522 (Mo. banc 2001);

Greenbriar Hills Country Club v. Director of Revenue, 935 S.W.2d 36 (Mo. banc 1996);

Emery v. Wal-Mart Stores, Inc., 976 S.W.2d 439, 449 (Mo. banc 1998);

Mo. Rev. Stat. §211.171.



## Argument

I. **The Missouri Court of Appeals Eastern Division Erred Because As A Matter of Basic Statutory Interpretation, Access To The Underlying Juvenile Proceeding Cannot Be Limited to the "Adjudicatory" Hearing Under Mo. Rev. Stat. §211.171.6 In Cases Where A Juvenile Has Been Charged With Acts That Would Be A Class A Or B Felony If Committed By An Adult.**

The Court of Appeals' Opinions were exercises in statutory interpretation. Primarily, the May 3, 2005 Opinion based its holding that the "adjudicatory" hearing should be open (but all others closed) on the general provisions of Mo. Rev. Stat. §211.171.1. In specific, the court cited the language from Subsection 1 that states "[t]he procedure to be followed at the hearing..." The Court then extrapolated that phrase to mean that only one species of the hearings should be open and the rest may remain closed under §211.171.6.<sup>2</sup>

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<sup>2</sup> KSDK also supports the argument of the Post-Dispatch, made in its Application for Transfer, that there are no discreet hearings in a juvenile proceeding. Instead, there are phases of the same hearing (certification as adult, adjudicatory, and dispositional). This is why Mo. Rev. Stat. §211.171.2 states that the "hearing may, in the discretion of the court, proceed in the absence of the child and may be adjourned from time to time." To suggest that each phase of the proceedings is actually a separate hearing

In so doing the Court ignored basic tenets of statutory interpretation. "The rules of statutory construction are clear that in situations where the same subject matter is addressed in general terms in one statute and in specific terms in another, and there is a 'necessary repugnancy' between the two statutes, the more specific statute controls over the more general." Robinson v. Health Midwest Dev. Group, 58 S.W.3d 519, 522 (Mo. banc 2001). Moreover, this rule of statutory interpretation is applied even if the conflict is between two subsections of the same statute. See, e.g., Greenbriar Hills Country Club v. Director of Revenue, 935 S.W.2d 36 (Mo. banc 1996).

The Court's interpretation of Mo. Rev. Stat. §211.171 causes a conflict within the language of the statute. Subsection 1 states, in relevant part:

The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he or she considers desirable, consistent with constitutional and statutory requirements. (emphasis added)

Subsection 6 states:

The general public shall be excluded and only such persons admitted as have a direct interest in the case or in the work of the court except in cases where the child is accused of conduct which, if committed by an adult, would be

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contemplates an absurd result—that the public is allowed to view the conviction of the juvenile but not the sentencing.

considered a class A or B felony; or for conduct which would be considered a class C felony, if the child has previously been formally adjudicated for the commission of two or more unrelated acts which would have been class A, B or C felonies, if committed by an adult. (emphasis added)

By limiting access to only the "adjudicatory" hearing, the Court ignores the specific directions of Subsection 6. Subsection 6 addresses the access of the general public in cases in which the child is "accused of conduct which, if committed by an adult, would be considered a class A or B felony." The subsection addresses "cases," not "a hearing." Consequently, a plain language reading of Subsection 6 would result in the entire case being open to the public where a juvenile is charged with conduct that would be a class A or B felony if committed by an adult.<sup>3</sup>

More importantly, the subsections of Mo. Rev. Stat. §211.171 address different portions of the juvenile proceedings: Subsection 3 addresses "any hearing"; Subsection 4 addresses "all cases"; Subsection 7 addresses "proceedings". Because the Court interpreted the "hearing" in Subsection 1 to relate only to the "adjudicatory" hearing (and applied that definition to Subsection 6), the Court of Appeals created a

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<sup>3</sup> "Courts are without authority to read into a statute a legislative intent contrary to the intent made evident by the plain language." Emery v. Wal-Mart Stores, Inc., 976 S.W.2d 439, 449 (Mo.banc 1998)(internal citations omitted). By reading into the statute the term "adjudicatory," the Court of Appeals changed the law by judicial fiat.

conflict with many of the subsections in §211.171, including Subsection 6.<sup>4</sup>

Consequently, where there is such a conflict, the specific statute must control the general.

This case concerns a child who is charged with conduct that if committed by an adult would be a class A or B felony. This is the precise situation Subsection 6 addresses. The Court's attempt to read Subsection 1 with Subsection 6 fails to the extent that it conflicts with the plain language of Subsection 6. The term "cases" cannot be interpreted to mean one "hearing," even if that one hearing is "adjudicatory."

Instead, it is clear that each subsection must be read separately in order to avoid the conflict that the Court's interpretation has caused. Subsection 1 is the general statute. Subsection 6 is the specific. As a matter of basic statutory interpretation, the specific should control and the entire "case" should be open to the public, including Relators. In short, the policy of public access to Missouri Courts, as codified by Mo. Rev. Stat. §211.171.6, demands that the public be granted access to all hearings in this juvenile case.

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<sup>4</sup> There is not a facial conflict between Subsection 1 and Subsection 6. It is the Court's interpretation of Mo. Rev. Stat. §211.171 that causes the conflict.

### **Conclusion**

For these reasons, KSDK respectfully requests that this Court order Respondent to comply with Mo. Rev. Stat. §211.171.6 and open to the public, including news media, the juvenile proceedings of In the Interest of L.K., Case no. 0522-JU00198.

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### **Certificate of Compliance**

The undersigned counsel hereby certifies pursuant to Rule 84.06(c) that this brief (1) contains the information required by Rule 55.03; (2) complies with the limitations contained in Rule 84.06(b); and (3) contains 1670 words, exclusive of the sections exempted by 84.06(b)(2) of the Missouri Supreme Court Rules, based on the word count that is part of Microsoft Word. The undersigned counsel further certifies that the diskette has been scanned and is free of viruses.

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John R. Phillips

### **Certificate of Service**

I hereby certify that one copy of this brief and one copy on floppy disk, as required by Missouri Supreme Court Rule 84.06(g), were served on each of the counsel identified below by placement in the United States Mail, postage paid, on September 19, 2005.

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APPENDIX TO SUBSTITUTE BRIEF OF APPELLANT/RELATOR/INTERVENOR  
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